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No 357

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CHARLES ELMORE CROPLEY  
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

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MARINE ENGINEERS' BENEFICIAL ASSOCIATION,  
LOCAL NO. 33,

*Petitioner,*

against

NATIONAL LABOR RELATIONS BOARD,

*Respondent.*

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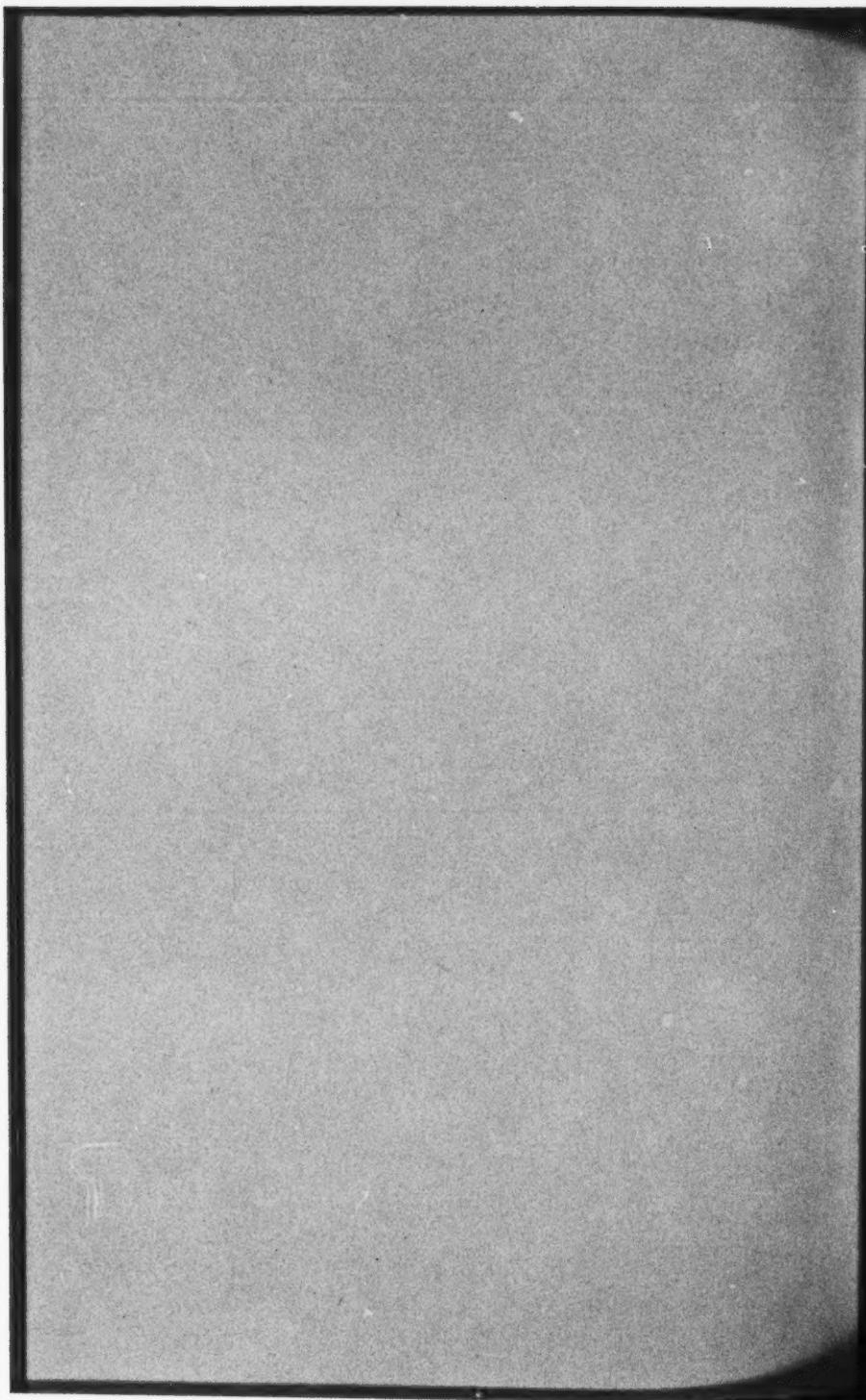
PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT AND BRIEF  
IN SUPPORT THEREOF

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ARTHUR F. DRISCOLL,  
*Solicitor for Petitioner.*

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**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

*To the Honorable, The Chief Justice of the United States  
and the Associate Justices of the Supreme Court of  
the United States:*

Your petitioner, Marine Engineers' Beneficial Association, Local No. 33, respectfully represents:

**I**

**Summary Statement of Matter Involved**

The petitioner, a labor union, charged an employer with a violation of the National Labor Relations Act and sought redress before the National Labor Relations Board, hereafter referred to as "The Board". After reviewing the facts alleged by the Union and a thorough investigation and although conceding that the facts showed the employer to be guilty of labor practices declared unfair by the National

Labor Relations Act and thus a violation of that Act. The Board refused to issue a complaint. Subsequently the Regional Director of The Board did issue a complaint but prior to any hearing on that complaint he again reversed himself and without the consent and over the objection of petitioner issued an official order withdrawing the complaint.

Thereafter The Board refused to issue a complaint.

Petitioner thereupon filed a petition in the Circuit Court of Appeals for the Second Circuit for a review of (a) the order of withdrawal of the complaint, and (b) the refusal of The Board to issue a complaint.

The Circuit Court of Appeals granted a motion by The Board to dismiss the petition as follows:

"Petition dismissed on the authority of *Federal Trade Commission v. Klesner*, 280 U. S. 19, and *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261."

The Board contends that no matter how arbitrary, how vicious or how malicious its refusal to issue a complaint may be, such a refusal cannot be reviewed.

The Board contends that it may refuse to issue a complaint even though it concedes that its investigation substantiates the charges made, and that such charges constitute a violation of the National Labor Relations Act, such a refusal under no circumstances is subject to review.

The Board, conceding that by refusing to issue a complaint *it is barring a petitioner from the only tribunal from which he can seek a remedy*, contends that even though it refuses to issue a complaint and thus deprives petitioner of the rights granted to the petitioner by the National Labor Relations Act, such refusal is nevertheless not subject to review.

The petitioner contends that the refusal of The Board to act upon a matter for which it was specifically created, where its refusal to take jurisdiction is arbitrary or capricious, or malicious, or vicious, is subject to review; that the framers of the National Labor Relations Act contemplated that The Board would weigh the issues arising out of the rights created by the Act with integrity and honesty, and if it found a violation would act thereon, and that failing this The Board's conduct is subject to review. That Section 10(f) (29 U. S. C. A., Sec. 160(g)) was placed in the Act by the Legislators to safeguard that very purpose.

## II

### **Statement of Jurisdiction**

The jurisdiction of this Court is invoked under the provisions of Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1935 (28 U. S. C. A., Sec. 347(a)).

## III

### **Question Presented**

The question presented is whether The National Labor Relations Board having investigated a complaint duly filed with it, and having found and conceded the existence of a violation of the National Labor Relations Act can arbitrarily or capriciously, or viciously, or maliciously refuse to issue a complaint without having such refusal subject to review.

**IV****Statute Involved**

The statute involved is the National Labor Relations Act, 29 U. S. C. A., Sections 151-166, commonly known as the Wagner Act, and particularly Section 10-f thereof (29 U. S. C. A., Sec. 160-f; 49 Stat. 449), reading as follows:

"Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. \* \* \*

**V****Reasons for Granting the Writ**

Section 1 of the National Labor Relations Act (29 U. S. C. A., Sec. 151) expresses the purposes of the Act by stating that the refusal by employers to accept the procedure of collective bargaining led to strife and other forms of industrial strikes and unrest. After reciting the harm that resulted therefrom, it states that experience has proved that the protection "by law of the right of employees to organize and bargain collectively safeguards commerce

" \* \* \* ." It continues by declaring that it is the policy of the United States to eliminate obstructions to the free flow of commerce by protecting the exercise by workers of the designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment. The Act then more specifically defines the rights of workers which it creates, and under Section 3-a (29 U. S. C. A., Sec. 153) specifically establishes The Board to protect and enforce those rights. Its activities and powers are defined in Sections 9, 10 and 11 (29 U. S. C. A., Secs. 160-163).

The matters to which the National Labor Relations Act addressed its concern are those arising out of the relationship of employer and employee. The rights created and the duties created were given exclusively for protection and enforcement to The Board. An employer or an employee aggrieved could seek redress solely in this tribunal. If this tribunal refuses or fails to act, if it fails to protect a right granted, if it fails to enforce a duty created, the beneficiary of the Act is helpless, except to resort to that very violence of strikes, destruction and bloodshed the Act was designed to prevent. It cannot be believed that the Congress of the United States directed its attention to the employer-employee relationship that was causing so much strife and was the subject of so much national concern that it justified a special act of Congress only to have the rights and remedies created by that Act rendered futile and abortive because the tribunal which Congress specifically set up to administer that Act and accomplish its purposes refuses arbitrarily and capriciously so to do.

The question of whether the refusal of The Board to issue a complaint is subject to review by a court is of vital importance to every person who has any interest in the National Labor Relations Act and is of vital national concern. This important question has never been, but should be, decided by the Supreme Court of the United States.

WHEREFORE petitioner prays that a writ of certiorari may issue out of and under the will of this Court directed to the United States Circuit Court of Appeals for the Second Circuit, commanding the said Court to certify and send to this Court for review and determination, as provided by law, this cause and a complete transcript of the record of all proceedings had herein; and that the order of the United States Circuit Court of Appeals dismissing the petition below be reversed, and that the petitioners may have such other and further relief in the premises as this Court may deem proper.

Dated, September , 1943.

MARINE ENGINEERS' BENEFICIAL ASSOCIATION,  
LOCAL NO. 33,

By EDWARD P. TRAINER,  
Business Manager,

Petitioner.

ARTHUR F. DRISCOLL,  
Solicitor for Petitioner.

